

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

August 5, 2002

RESPONSIBLE STAFF:

Jennifer Russel

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	7/17/02
	7/24/02
Hearing Date	8/5/02
Record Held Open	
Policy Discussion	

TITLE:

T-351—An Ordinance to Amend Chapter 24 of the City Code (City Zoning Ordinance) Article I, Entitled, "In General" Section 24-1, entitled "Definitions" so as to amend the Definition of Amusement Center, to include certain types of Internet Cafes, and to Provide Definitions for Tattoo Parlor and Adult-Oriented Businesses and Body Piercing Establishments to Amend Article III, Entitled "Regulations Applicable to Particular Zones", so as to Amend Regulations for Amusement Centers as to Hours of Operation and Inclusion of Requirement for Certain Internet Cafes and Amend Division 19 Entitled "MXD Zone, Mixed Use Development," Section 24-160D.3 Commercial, Employment, Industrial so as to Require Special Exception Approval of Uses Designated as Special Exceptions in the R-B, C-B, C-1, E-1 and I-3 Zones and further to prohibit Tattoo Parlors, Pawnshops, Adult-Oriented Businesses, Body Piercing Establishments and Opiate Addiction Treatment Facilities in the MXD Zone.

SUPPORTING BACKGROUND:

A recent review of the MXD zone revealed that a wide variety of potentially objectionable uses are not substantially controlled by the zoning ordinance. At the present time, all uses permitted by right and by special exception in many zones are permitted by right in the MXD zone. The text amendment will, for the first time, define adult-oriented establishments, body piercing establishments and tattoo parlors. The definition of amusement centers will be modified to include establishments with computers. Internet cafes with more than three computers will now fall within this definition. The amendment also prohibits the Board of Appeals from approving hours of operation for an amusement center to extend beyond midnight and further requires existing internet cafes to apply for special exception approval as an amusement center within 6 months of 09/01/02 or be prohibited from operating. There is further modification to a variety of uses that are presently permitted by special exception in many zones. At present, these uses are permitted by right in the MXD zone; those uses will now be special exception uses in the MXD and therefore subject to BOA approval. Finally, the amendment adds the following uses to the list of prohibited uses in the MXD zone: adult-oriented businesses, body piercing establishments, pawnshops, tattoo parlors and opiate addiction facilities.

DESIRED OUTCOME:

Planning Commission hold record open for two days; Mayor and City Council hold record open for nine days.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE I, ENTITLED, "IN GENERAL" SECTION 24-1, ENTITLED "DEFINITIONS" SO AS TO AMEND THE DEFINITION OF AMUSEMENT CENTER, TO INCLUDE CERTAIN TYPES OF INTERNET CAFES, AND TO PROVIDE DEFINITIONS FOR TATTOO PARLOR AND ADULT-ORIENTED BUSINESSES AND BODY PIERCING ESTABLISHMENTS TO AMEND ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 12 ENTITLED "C-2 ZONE, GENERAL COMMERCIAL" SECTION 24-118(7), SO AS TO AMEND REGULATIONS FOR AMUSEMENT CENTERS AS TO HOURS OF OPERATION AND INCLUSION OF REQUIREMENT FOR CERTAIN INTERNET CAFES AND AMEND DIVISION 19 ENTITLED "MXD ZONE, MIXED USE DEVELOPMENT," SECTION 24-160D.3 COMMERCIAL/EMPLOYMENT/INDUSTRIAL SO AS TO REQUIRE SPECIAL EXCEPTION APPROVAL OF USES DESIGNATED AS SPECIAL EXCEPTIONS IN THE R-B, C-B, C-1, C-2, E-1 AND I-3 ZONES AND FURTHER, TO PROHIBIT TATTOO PARLORS, PAWNSHOPS, BUSINESSES, BODY PIERCING ESTABLISHMENTS AND OPIATE ADDICTION TREATMENT FACILITIES IN THE MXD ZONE.

Text Amendment No. T-351

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article I, Section 24-1, Article III, Section 24-118(7) and Section 160 D.3(b) of the City Code be and they are hereby amended as follows:

ARTICLE I. IN GENERAL

Sec. 24-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

* * * * *

Adult-oriented establishment- An establishment which, for money or any other form of consideration devotes a significant or substantial portion of stock in trade, to the sale, exchange, rental, loan, trade, transfer of one or more of the following: 1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations or sexually-oriented paraphernalia or novelty items

which are characterized by an emphasis upon the depiction, description or reproduction of specified sexual activities or specified anatomical areas; or 2) instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities; or (3) features nude adult entertainment performances.

* * * * *

Amusement center: A commercially operated indoor facility containing more than three (3) coin - operated or fee paid amusement devices or computers suitable for participation for a fee by people of all ages, including but not limited to television games, electronic or mechanical novelty games, electromechanical and electronic target games, pinball machines, small kiddie rides and other similar devices, whether operated as a primary or accessory use. Internet cafes and similar establishments containing more than three (3) computers where patrons for a fee may play games on a computer shall be deemed to be an amusement center subject to the standards contained in Section 24-118(7) of this Chapter. Pool tables and billiard tables are not amusement devices.

* * * * *

Body-piercing establishment - An establishment in which a fee is charged or a barter system is used for the act of penetrating the skin to make a hole, mark, or scar, generally permanent in nature on the body of a person. Body piercing does not include the use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

* * * * *

Tattoo parlor- An establishment which offers or practices the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

* * * * *

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES.

* * * * *

DIVISION 12. C-2 ZONE, GENERAL COMMERCIAL

* * * * *

Sec. 24-118. Uses permitted as special exceptions.

The following uses are permitted in the C-2 Zone as special exceptions after approval by the board of appeals in accordance with the provisions of section 24-189, or by the city council in accord with section 24-167A(c) as to subparagraph (9) below:

* * * * *

(7) Amusement center, whether operated separately or in conjunction with any other permitted or special exception use, subject to the following regulations:

- | | | | | | | |
|-----|---|---|---|---|---|---|
| (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |
| (d) | * | * | * | * | * | * |
| (e) | * | * | * | * | * | * |
| (f) | * | * | * | * | * | * |
| (g) | * | * | * | * | * | * |
| (h) | * | * | * | * | * | * |
| (i) | * | * | * | * | * | * |
| (j) | * | * | * | * | * | * |

(k) The board of appeals shall set such conditions it deems necessary and desirable; provided however the board shall not approve hours of operation to extend beyond 12:00 o'clock midnight.

- | | | | | | | |
|------------|---|---|---|---|---|---|
| <u>(l)</u> | * | * | * | * | * | * |
| <u>(m)</u> | * | * | * | * | * | * |

* * * * *

(n) Any internet café defined as an amusement center existing on the effective date of this ordinance shall have a period of one hundred eighty (180) days from September 1, 2002 to apply for special exception approval as an amusement center. Any establishment failing to make application for approval after the expiration of such one hundred eighty (180) days shall not be deemed to be a lawful non-conforming use and shall be prohibited until such special exception approval is granted.

* * * * *

DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENTS

* * * * *

Sec. 24-160 D.3. Uses permitted.

* * * * *

(b) *Commercial/employment/industrials.* All uses allowed by right [or by special exception] in the R-B, C-B, C-1, C-2, C-3, E-1 and I-3 Zones are permitted uses. All uses allowed by special exception the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3. Zones shall be special exception uses in the MXD Zone and subject to approval by the City Board of Appeals¹. Designation of a use as a special exception in any of the zones listed herein shall mean the use is a special exception in the MXD Zone, notwithstanding the fact that such use may be allowed as a permitted use in any other zone referred to in this subsection (b). [except] The following uses [which] are specifically prohibited:

Manufacture, compounding, and processing of goods or articles.

Adult-oriented business

Body piercing establishments

Pawnshops

Drive-in theaters.

Tattoo parlor

Opiate addiction treatment facilities

Automobile paint and body repair shops.

- (1) The approximate location and general type of commercial, employment and industrial uses proposed on the site must be shown on sketch plan and schematic development plan submitted in accord with section 24-160D.9 and Article V, with the level of specificity increasing at each level of plans review.
- (2) In order to establish an appropriately mixed character within the entire MXD zoned area, the following percentages of floor area proposed on site as shown on a sketch plan shall not exceed:

Retail commercial.....	60%
Employment/office.....	65%
Other commercial/institutional.....	15%

¹ Amusement centers in the MXD Zone shall not be required to comply with the standard of subsections (1), (2) and (3) of Section 24-144(a) of this Code.

Individual percentages may be exceeded by approval of the city council upon application by an applicant and for good cause shown; provided, however, the cumulative total of all categories shall not exceed one hundred (100) percent.

ADOPTED by the City Council of Gaithersburg, Maryland, this _____ day of _____, 2002.

SIDNEY A. KATZ, Mayor and
President of the City Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2002. APPROVED/VETOED by the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2002.

SIDNEY KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002 and the same was APPROVED/VETOED by the Mayor of the City of Gaithersburg On the _____ day of _____, 2002. This Ordinance will become effective on the _____ day of _____, 2002.

DAVID B. HUMPTON, City Manager